

REMARKS

At the outset, Applicant would like to draw the Office's attention to Applicant's new reference number, 059195-0120, for this application. Applicant submitted concurrently a revised Application Data Sheet to formally change the reference number. Applicant kindly asks the U.S. PTO to use this new number in future correspondence.

I. Status of the claims

Claims 1, 5-13, and 60-61 are pending. Claims 11-13 and 56-59 are canceled herewith without prejudice or disclaimer. Claims 2-4 and 14-59 were previously canceled. Applicant reserves the right to file one or more continuing applications to the canceled subject matter. Claims 1, 60, and 61 are amended for the reasons that follow:

Claim 1

Claim 1 is amended according to the suggestion by Examiner Pryor in a telephone call to the undersigned on May 9, 2005. During that conversation, Examiner Pryor indicated that it would be appropriate to amend claim 1 to alternatively recite the therapeutic agents of original claim 13. Applicant thanks Examiner Pryor for this recommendation and have amended claim 1 accordingly.

Claims 60 and 61

Claims 60 and 61 are amended solely to correct an grammatical error: these claims are now appropriately drawn to the "composition" and not the "method" of claim 1. Accordingly, Applicant requests that the rejection of claims 60 and 61 under 35 U.S.C. § 112, second paragraph be withdrawn.

II. Claims 11-13 are canceled

The cancellation of claims 11-13 moots the rejection under 35 U.S.C. § 112, second paragraph, at page 2 of the office action.

III. No dependent claim requires the inclusion of arsenic trioxide in the presently claimed pharmaceutical composition and, therefore, Yang does not anticipate claims 1 and 5

Claims 1 and 5 are rejected as allegedly anticipated by Yang *et al.* (CN 1061908). According to the Office, Yang teaches “an anticancer drug comprising arsenic trioxide plus realgar plus a carrier,” office action at page 3. The Office also contends that although present claim 1 recites “consisting essentially of,” “this amendment does not exclude arsenic trioxide since Applicant adds arsenic trioxide in dependent claims,” office action at page 3.

Purely for the sake of expediting prosecution, Applicant has canceled claims 56-59, which specified the percentage of arsenic trioxide in the pharmaceutical composition as an indicator of purity. As Applicant recounted in their paper dated January 11, 2005, the undersigned had previously discussed this transitional phrasing with Examiner Pryor, who stated that “consists essentially of” excludes the presence of arsenic trioxide in the arsenic sulfide compound.

For this reason, and as the Examiner acknowledged via telephone conference with the undersigned, there is no anticipation of claims 1-5 and 14 because Yang’s composition is a pulverized mixture of unpurified realgar ore and arsenic trioxide, among other ingredients. In accordance with the Office’s own rationale, therefore, Applicant requests withdrawal of this rejection.

IV. No dependent claim requires the inclusion of arsenic trioxide in the presently claimed pharmaceutical composition and, therefore, Ellison does not anticipate claims 1, 5-8, and 11-13

Claims 1, 5-8, and 11-13 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Ellison *et al.*, USSN 2002/0183385. Ellison concluded that arsenic trioxide can be used to treat a broad range of cancers and, for this reason, Ellison’s anti-cancer agent specifically comprises arsenic trioxide.

As Applicant outlined above, claims 56-59, which specified the percentage amount of arsenic trioxide in the claimed pharmaceutical composition, are canceled. Contrary to the Office’s position, therefore, Applicant does not “add arsenic trioxide in dependent claims” (office action at page 4). Applicant respectfully requests that this rejection be withdrawn.

VI. The rejection of claims 58 and 59 as obvious is moot

Since claims 58 and 59 are canceled, the rejection of those claims under 35 U.S.C. § 103(a) at page 4 of the office action is moot.

VII. Conclusion

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date September 1, 2005

FOLEY & LARDNER LLP

Customer Number: 22428

Telephone: (202) 672-5404

Facsimile: (202) 672-5399

By V.S. Noel

#55,459 V. MOHAN-RAM

for: Stephen A. Bent
Attorney for Applicant
Registration No. 29,768